

§ 275.205-2

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² Source: Monthly Review, New York Stock Exchange.

³ Source: The Exchange, New York Stock Exchange magazine, May, Aug., Nov. 1971 and Feb. 1972 editions. Upon request the Statistics Division of the Research Department of the NYSE will make this figure available within 10 days of the end of each quarter.

⁴ The ratio of column 4 to column 3.

Change in NYSE Composite Index value for 1971: 56.43 – 50.23=6.20.

Accumulated Value of Dividends of NYSE Composite Index for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0072} \times \frac{\text{June}}{1.0070} \times \frac{\text{Sept.}}{1.0071} \times \frac{\text{Dec.}}{1.0070} - 1.00 = 0.0286$$

Aggregate value of dividends paid on NYSE Composite Index assuming quarterly reinvestment:

For 1971:

$$.0286 \times 56.43 = 1.61$$

Investment record of the New York Stock Exchange Composite Index assuming quarterly reinvestment of dividends:

$$\frac{6.20 + 1.61}{50.23} = 15.55 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the NYSE dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the NYSE Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	51.84
Index value Nov. 30, 1970	47.41
Change in index value	4.43

Quarter ending	Dividend yield quarterly percent	Rate for each month of quarter (1/12 of annual)
Dec. 1970	0.79	0.26
Mar. 197172	.24
June 197170	.23
Sept. 197171	.24
Dec. 197170	.23

Accumulated value of dividends reinvested:
 December=1.0026
 January-March=1.0072
 April-June=1.0070
 July-September=1.0071
 October-November=1.0047⁴

⁴ The rate for October and November would be two thirds of the yield for the quarter ended September 30 (i.e. .667×.71=4736), since

Dividend yield:

$$(1.0026 \times 1.0072 \times 1.0070 \times 1.0071 \times 1.0047) - 1.00 = .0289$$

Aggregate value of dividends paid computed consistently with the index:

$$.0289 \times 51.84 = 1.50$$

Investment record of the NYSE Composite Index for the 12 months ended November 30, 1971:

$$\frac{4.43 + 1.50}{47.41} = 12.51 \text{ percent}$$

(Secs. 205, 211, 54 Stat. 852, 74 Stat. 887, 15 U.S.C. 80b-205, 80b-211; sec. 25, 84 Stat. 1432, 1433, Pub. L. 91-547)

[37 FR 17468, Aug. 29, 1972]

§ 275.205-2 Definition of "specified period" over which the asset value of the company or fund under management is averaged.

(a) For purposes of this rule:

(1) *Fulcrum fee* shall mean the fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

(2) *Rolling period* shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

(b) The specified period over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices

the yield for the quarter ended December 31 would not be available as of November 30.

or such other measure of investment performance are computed.

(c) Notwithstanding paragraph (b) of this section, the specified period over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if:

(1) The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each subperiod of the rolling period; and

(2) The fulcrum fee is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the rolling period.

(Secs. 205, 106A, 211; 54 Stat. 852, 855; 84 Stat. 1433, 15 U.S.C. 80b-5, 80b-6a, 80b-11)

[37 FR 24896, Nov. 22, 1972]

§ 275.205-3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b-5(a)(1)) will not be deemed to prohibit an investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided*, That the client entering into the contract subject to this section is a qualified client, as defined in paragraph (d)(1) of this section.

(b) *Identification of the client.* In the case of a private investment company, as defined in paragraph (d)(3) of this section, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Act (15 U.S.C. 80b-2(a)(22)), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of paragraph (a) of this section.

(c) *Transition rule.* (1) An investment adviser that entered into a contract before August 20, 1998 and satisfied the conditions of this section as in effect on the date that the contract was entered into will be considered to satisfy the conditions of this section; *Provided*, however, that this section will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after August 20, 1998.

(2) *Advisers to private funds with non-qualified investors.* If you are an investment adviser to a private investment company that is a private fund as that term is defined in § 275.203(b)(3)-1, and you were exempt from registration under section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)) prior to February 10, 2005, paragraph (b) of this section will not apply to the existing account of any equity owner of a private investment company who was an equity owner of that company prior to February 10, 2005.

(3) *Advisers to private funds with non-qualified clients.* If you are an investment adviser to a private investment company that is a private fund as that term is defined in § 275.203(b)(3)-1, and you were exempt from registration under section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)) prior to February 10, 2005, section 205(a)(1) of the Act (15 U.S.C. 80b-5(a)(1)) will not apply to any investment advisory contract you entered into prior to February 10, 2005, provided, however, that this paragraph will not apply with respect to any contract to which a private investment company is a party, and provided further that section 205(a)(1) of the Act will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract on or after February 10, 2005.

(d) *Definitions.* For the purposes of this section:

(1) The term *qualified client* means:

(i) A natural person who or a company that immediately after entering into the contract has at least \$750,000 under the management of the investment adviser;